UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1988/10/Add.1
25 September 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 5 of the provisional agenda

QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Progress report submitted by Mrs. Fatma-Zohra Ksentini, Special Rapporteur, pursuant to Commission resolution 1997/9

Addendum

CONTENTS

	Page
Introduction	2
COMMENTS RECEIVED FROM STATES	2
Australia	2
France	3
Germany	3
Indonesia	4
Japan	5
Malaysia	5
Myanmar	7
New Zealand	7
Nigeria	8
Philippines	9
South Africa	10
Turkey	10
United Kingdom of Great Britain and Northern Ireland	11
United States of America	12

GE.97-14085 (E)

Introduction

1. The present report contains the comments received from Governments after the submission for processing and reproduction of the progress report of the Special Rapporteur submitted to the Commission at its fifty-third session (E/CN.4/1997/19).

2. Comments on the allegations contained in the above-mentioned report have been received from the Governments of Australia, France, Germany, Indonesia, Japan, Malaysia, Myanmar, New Zealand, Nigeria, the Philippines, South Africa, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America.

COMMENTS RECEIVED FROM STATES

Australia

[Original: English]
[7 March 1997]

1. Papua New Guinea allegation (para. 42 of the report). This allegation does not relate to the exporting of wastes from Australia to Papua New Guinea, but to environmental impacts which have allegedly occurred from the Bougainville copper mine. The Australian Government considers that it goes well beyond the Special Rapporteur's mandate which is to investigate dumping and illegal traffic of hazardous waste. Furthermore the allegation relates to events which allegedly took place but are now too dated to be a relevant factor for consideration by the Commission.

2. Philippines allegations (para. 39). Upon investigation the Electronic scrap was found not to contain hazardous constituents and the containers were subsequently allowed entry into the Philippines. This allegation also referred to the practice of burning off plastic from copper wire. There is, however, no evidence to suggest that burning or a similar mode of treatment was used in this case. It is, furthermore, a matter of current debate as to whether plastic coated cable is generally considered a hazardous waste under the Basel Convention.

3. Philippines allegations (para. 41). Australian exports of used lead acid batteries to the Philippines took place at a time when the Australian Government had no jurisdiction over exports of used lead acid batteries to the Philippines. The Government of Australia draws to the attention of the Special Rapporteur the legislation enacted by the Australian Parliament in 1996 which guards against the possibility of illegal traffic in hazardous wastes.

4. Indonesian allegations (para. 40). It is not clear whether these shipments occurred before or after the Basel Convention entered into force in 1992. In addition, action was taken by the two Governments after the allegations were made, including the amendment by Australia of its hazardous wastes legislation to ensure that all such trade in hazardous wastes is subject to strict controls.

5. The Australian Government considers that these allegations are ill-founded, do not address the present-day realities of countries involved in illegal traffic, and fail to take account of the legislation passed by the Australian Parliament in 1996. The Australian Government acknowledges that in the past it was possible for hazardous waste destined for recycling to be exported to the Philippines, Indonesia and other countries without a permit. The Australian delegation spoke of its recognition of defects in domestic legislation to the Conference of the Parties to the Basel Convention in 1994, and assured the Conference of the Government's intention to survey the extent of trade, consult with industry and environmental NGOs and propose amendments to the legislation. The Australian Government also undertook a round of bilateral discussions with its trading partners including Indonesia and the Philippines. Since 12 December 1996 when Australian legislation came into force, all exporters of hazardous waste have been required to obtain a permit from the Federal Minister for the Environment prior to shipping. A permit can only be issued after the consent of the importing country has been obtained and only if the Environment Minister is satisfied that the wastes will be managed in an environmentally sound manner. Any permit decision also takes account of Australia's domestic capacity to process the waste. To date no permits have been issued for the export of hazardous waste to the Philippines or Indonesia since the amendments to the Hazardous Waste Act came into force. The Australian Government is committed to taking action against illegal traffic and severe penalties are available under the amended Act for illegal traffic.

France

[Original: French]
[24 March 1997]

1. Rhône Poulenc allegation (para. 46). The French authorities are currently investigating.

2. Myanmar allegation (para. 47). The French authorities do not consider this a case of illicit dumping of toxic or dangerous products and wastes. The case would therefore exceed the mandate as defined in resolution 1995/81.

Germany

[Original: English]
[12 March 1997]

1. Albania allegations (para. 48). Without being legally obliged to do so, the German Government brought back to Germany 500 tons of expired pesticides from Albania. They were disposed of in Germany in an environmentally sound manner.

2. Egypt allegation (para. 49). In early 1992, 950 tons of waste consisting of shredded batteries and transformers were exported illegally from Germany to Egypt. After having been alerted by the organization Greenpeace, Egyptian authorities denied the cargo ship carrying the waste entry to the

port of Alexandria. The waste was brought back to Germany where it was disposed of in an environmentally sound manner. The health of the Egyptian population was not threatened.

3. India allegation (para. 50). This communication is based on unfounded reports by the press dating back to 1995. The exports reported were not illegal. They had been approved by both the competent German and Indian authorities. The Indian recipient had the necessary permit from the Indian authorities to process the zinc powder imported from Germany.

Indonesia

[Original: English]
[10 March 1997]

1. From a legislative point of view, in 1982 the Government promulgated Environmental Act No.4/1982 which, its is widely recognized, needs improving. That is why efforts are currently under way to reform the first-generation Environmental Act and to promulgate a more comprehensive Act which incorporates new elements, inter alia the community's or people's responsibility and participation in environmental protection and the need for an environmental audit.

2. Pending the promulgation of the new Environmental Act, in 1995 the Government of Indonesia renegotiated the first generation of working contracts between the copper and gold mining companies in Irian Jaya. A new working contract was concluded with PT Freeport Indonesia (PTFI), which basically covered the technical, financial, fiscal, manpower, environmental and community development aspects of the mining activities. In accordance with the contract, PTFI has undertaken, among others, the following concrete measures:

(a) From an environmental point of view, PTFI has committed itself to taking the necessary measures in "tailings" and "overburden" management with a view to maintaining and promoting environmental protection in the area where it operates and eventually preventing it from becoming a ghost town;

(b) From a socio-cultural point of view, PTFI has shown a more responsive business attitude towards the surrounding situation and conditions; its positive contributions to the promotion of public health services, training and education, economic and community development, agriculture and cultural conservation have outstripped the negative aspects.

3. Allegations relating to the pollution caused by the operations of Texaco's Caltex company in Riau, Sumatra and IMLI on Java (paras. 40, 63, 73) lack clarity, making their credibility questionable. Also, it was considered irrational that the source of the allegations should bring to the attention of the Special Rapporteur alleged misdeeds committed by the companies concerned back in 1992. Moreover, the fact that the allegations were directed against Indonesia and not against the respective companies is considered evidence of their being politically motivated. The Indonesian Government considers it possible that anti-Indonesian elements working in collaboration with certain NGOs are behind the allegations.

Japan

[Original: English]
[18 March 1997]

1. The Government of Japan provided the Special Rapporteur with information on the allegation relating to Asian Rare Earth (ARE) (para. 52). The Japanese Government was unable to provide any information as to the allegation that appears in paragraph 41, owing to the fact that no Japanese company was specifically named in the allegation, nor could any company be identified despite extensive inquiries.

2. The following information on ARE has been submitted by Mitsubishi Chemical Corporation (MCC) to the Japanese Government and to the Special Rapporteur: in 1982 ARE commenced its rare earth production in Lahat, Perak, Malaysia. MCC has been a shareholder directly holding approximately one third of ARE's outstanding shares; other shareholders have been BEH Minerals (a Malaysian company engaged in collecting and segregating mineral ores or Amang out of the tin tailings) and other Malaysian investors. In 1985, a complaint was filed against ARE with the High Court of Ipoh, Perak, Malaysia by eight residents of Bukit Merah New Village located near the ARE plant alleging that their exposure to ARE's radioactive materials and waste were threats to their health and seeking cessation of the plant's operation, clean-up of the radioactive materials and payment for damages (without specifying any amount). The allegation mentions "Eight people, two of whom have since died, filed suit ... ." During the proceedings at the High Court, no such deaths were referred to, nor did the plaintiffs blame the deaths on ARE's operations. The deaths therefore, had nothing to do with the alleged issue. On 11 July 1992, the High Court ruled that ARE was liable for causing a private nuisance and an injunction was, therefore, granted ordering ARE to cease its operations. This injunction order was suspended on 5 August 1992 by the Supreme Court of Malaysia, following ARE's appeal against the High Court decision filed on 23 July 1992. On 23 December 1993, the Supreme Court allowed the appeal thereby holding that the High Court decision was incorrect and reaffirming that ARE's operations were lawful and in compliance with regulations. ARE has denied the allegations, which are scientifically groundless. As supported by the judgement of the Supreme Court of Malaysia, there is neither estab'ished fact nor scientific rationale indicating a relationship between the alleged health injury and the operation of ARE. Regardless of the Supreme Court decision supporting the position of ARE, however, the company decided to cease its operations as publicly announced on 18 January 1994. Such decision was made not because of "environmental reasons and for posing health threats to villagers in Bukit Merah" or "widespread public protest", as referred to in the allegation, but because of its own business assessment regarding the future of Rare Earth Industry in Malaysia.

Malaysia

[Original: English]
[3 June 1997]

1. Asian Rare Earth (ARE) was incorporated on 23 November 1979 to produce rare earth compounds and calcium phosphate from monazite. The process also

produced a radioactive by-product, thorium hydroxide. Operations began in May 1982. With respect to the civil suit filed in 1985 against ARE by eight people who represented the people of Bukit Merah, on 11 July 1992, the Ipoh High Court had issued an injunction order for ARE to cease operations immediately. However, on 23 July 1992, ARE successfully appealed to the Supreme Court to suspend the High Court ruling. After due consideration of the appeal, the Supreme Court, on 23 December 1992, ruled that ARE be allowed to continue its operations. Nevertheless, on 17 January 1994 ARE announced officially that it would close down permanently owing to the following reasons:

(a) Difficulties faced by ARE in obtaining local monazite due to the decline of tin ore mining activities;

(b) Competition from rare earth producers incorporated in foreign countries, especially China, which is the world's largest producer of rare earth. As a result, it was envisaged that the industry would not be viable in the long run. Following the closure, the ARE plant is to be decommissioned and would undergo a process of decontamination. The entire project is expected to be completed within two years. Statistically, there is no conclusive evidence to show that the increase of leukaemia, infant mortality, congenital deformities and the increased level of lead in the affected children's blood were due solely to the operations in ARE; furthermore, the Atomic Energy Licensing Board of Malaysia - the competent authority in controlling the operations of ARE - was satisfied that ARE had complied with all the licensing conditions laid upon it and subsequent inspections and data collection confirmed the findings.

2. As for the sale of paraquat (para. 62), all pesticides, including paraquat, are regulated under the Pesticides Act 1974. Under the provisions of this Act, all pesticides must be registered with the Pesticides Board before they are allowed to be imported or manufactured for sale in the country in order to ensure that they do not have unacceptable adverse effects on humans or the environment. The Board would only register a pesticide after it is thoroughly convinced that the benefits derived from its use overweighs the risks. The Pesticides Board may also impose additional conditions for the registration of certain pesticides. In the case of paraquat, all approved products must contain a dye and a stenching agent as a means of minimizing accidental poisoning. The Board has also gazetted the Pesticides (Highly Toxic Pesticides) Regulations 1996, with the objective of controlling the use of certain highly toxic pesticides, including paraquat. This forms part of the efforts of the Board to minimize risks faced by paraquat users, especially plantation workers. The regulations, inter alia, require employers to provide their workers with appropriate protective clothing, first aid kits and training in the methods of handling paraquat. The workers are required to wear the protective clothing provided and to follow the instructions for the safe handling of highly toxic pesticides. Furthermore, the Department of Agriculture and other related agencies conduct training programmes to educate farmers and pesticide users on the safe and judicious use of pesticides. The claim that paraquat constitutes 80 per cent of herbicide sales in Malaysia is a gross overestimation, the correct estimate presently being only 20 per cent.

Myanmar

[Original: English]
[19 February 1997]

1. The Government of Myanmar declared that Myanmar is neither a State where illicit traffic of toxic or dangerous products and wastes originates nor a State recipient of such traffic. Nonetheless, considering that the allegations referred to seem to be related to alleged human rights violations in the context of the construction of a natural gas pipeline (para. 47), the Government of Myanmar provided the Special Rapporteur with information on the matter.

2. The natural gas fields in the Gulf of Mottamma are being developed with the participation of Total (France), Unocal and Texaco (United States) and some other foreign oil companies. Natural gas from the Yadana gas field will be sold to Thailand and at present a pipeline is being laid by Total and Unocal to carry the gas to the Myanmar-Thai border. The route selected for the gas pipeline is the one that poses the least threat to the environment; it does not pass through any village. The two foreign oil companies involved in the project are actually helping the people living along the route of the pipeline by providing new economic opportunities for the villagers, thus improving significantly the lives of the local populace. The Government of Myanmar, with the active participation of the people and together with the companies concerned, has undertaken to provide facilities for independent media persons and concerned officials from Western countries to make extensive tours of the areas in question and these sources have not supported any of the allegations mentioned in the report which are, therefore, considered to be unfounded and totally untrue, emanating from the opponents of the Government of Myanmar who aim at denigrating the Government and the armed forces.

New Zealand

[Original: English]
[10 March 1997]

1. Export of battery scrap from New Zealand to the Philippines (para. 41). Assuming that the exports alleged to have been illicitly moved or dumped took place during the first six months of 1993, the Government of New Zealand states that the exports constituted neither "illicit traffic" nor "dumping", the two key elements of the mandate established by the Commission in its resolution 1995/81; also, the transactions being in violation of Philippines national law, the activities of importers based within the Philippines are within the jurisdiction of that Government, not the Government of New Zealand. Furthermore, the export was a normal commercial transaction, not "dumping" in the trade sense; nor was it "dumping" in the sense used in the wastes context, since the batteries were not subject to disposal but rather recycled as an input into industrial process in the Philippines. The trade was therefore environmentally benign as it substituted the use of recycled lead for virgin lead.

2. In addition, the Government of New Zealand, noting that the information provided by the Special Rapporteur focuses in some detail on the industrial

processing which followed the import of battery waste to the Philippines, considers that the potential impact, including from a human rights perspective, of such industrial processing seems to be a different question from that of the movement and disposal of the raw materials for the industry and expresses its doubts about this subsequent industrial processing being an element of the Special Rapporteur's mandate. In any event, it is not for the Government of New Zealand to provide comment with regard to such processing.

3. Finally, both New Zealand and the Philippines have acceded to the Basel Convention, which provides a legal framework governing trade in hazardous wastes, including a system of Prior Informed Consent. New Zealand was not a State party to the Convention at the time of these alleged exports and thus a conclusion of "illicit" trade could not be based on legal obligations pursuant to the Basel Convention. However, New Zealand takes very seriously its Basel Convention obligations and took legislative steps prior to ratification to ensure that its Prior Informed Consent obligations were met for waste exports from New Zealand.

Nigeria

[Original: English]
[27 February 1997]

1. With respect to the allegation contained in paragraph 55, the Government of Nigeria stated that Shell Oil is a Netherlands/United Kingdom multinational corporation and not a Netherlands/United States joint venture.

2. The Government of Nigeria has been monitoring the activities of Shell as well as those of the other oil companies to ensure that all their drilling and prospecting procedures conform to local environmental laws and attend to the environmental needs of the local population. The head of the monitoring unit of the Nigerian National Petroleum Corporation - which, together with the Federal Protection Agency, is charged with these responsibilities - is from the Ogoniland, as is the Minister of Petroleum. All federal and state government compensation is made directly through a federal government parastatal, the Oil Mineral Producing Areas Development Commission (OMPADEC), whose membership is comprised solely of indigenous people of the oil-producing areas, including the Ogoni areas, and which has been generally acknowledged as being very efficient and effective in payment of compensation. Ogoniland is one of the communities in Rivers State with the greatest concentration of educational institutions in Nigeria. Also, most of the very important Federal Government-owned parastatals and institutions in Rivers State are sited in Ogoniland. All these institutions offer great opportunities for employment and commerce to the Ogonis. Also, Ogoniland has far more than its fair share of the federal-funded road network vis-à-vis other parts of Nigeria. It is a baseless allegation that the Ogoniland "has been occupied by the police since May 1994". In this regard, the report of the Secretary-General's fact-finding mission to Nigeria (A/50/960 of 28 May 1996) as well as the interim response of the Government of Nigeria to the above-mentioned report in a letter dated 21 May 1996 from the Special Adviser (Legal Matters) to the Head of State of Nigeria addressed to the United Nations Secretary-General (A/50/960, annex II) are relevant.

3. Nonetheless, the Federal Government and the people of Nigeria reiterate their strong belief that illicit dumping of toxic wastes is a deliberate act aimed at protecting the life and health of the citizens of the countries from which the wastes emanate at the expense of the peoples in the recipient countries. Furthermore, the Government stressed that surveillance to prevent these unwanted products from entering or circulating in the country is costing the country public funds that would otherwise have been usefully employed in providing basic necessities of life for the rural population.

Philippines

[Original: English]
[24 March 1997]

1. With respect to the import and recycling of scrap batteries (paras. 41, 56), the Philippine Department of Environment and Natural Resources started regulating the importation of scrap batteries in July 1994. Currently, the Philippine Recyclers, Inc. (PRI) is the only legal importer of scrap batteries in the country. The amount of scrap batteries allowed to be imported is being reduced until a total ban is achieved at the end of 1997 in conformity with the Basel Convention commitments. In the meantime, only those scrap batteries that can be safely recycled are allowed in the country. There are specific Philippine regulations intended to screen out scrap batteries that can no longer be safely recycled. PRI is regularly monitored for compliance with air quality, water effluent and solid waste disposal standards. Philippine regulations for processing of parts of scrap batteries are fully consistent with its commitment to the Basel Convention, thereby discouraging the international traffic of wastes.

2. With respect to the alleged mass poisoning of 4,000 people in 24 villages and toxicological risk to more than 10,000 people of Marinduque as a result of the Marcopper Mining Company mine tailings spill incident of 24 March 1996 (para. 44), there is no evidence that acute poisoning occurred in the exposed population due to mine tailings or that there is an immediate threat to human health as a result of the leakage. There is also no evidence of trace metal contamination or accumulation beyond internationally acceptable limits that may pose toxicological risks to either aquatic biota or human health. The Boac River, however, remains unsuitable for domestic and agricultural purposes because of heavy siltation from the mine tailings. This finding, by the United Nations Environment Programme, essentially confirms the findings made earlier by Philippine government agencies including the Environmental Management Bureau. The Government noted that the tunnel leak had been sealed to stop further flow and the Boac River had been dredged to prevent flooding, under the direct supervision of the Mines and Geosciences Bureau (MGB). Long-term rehabilitation efforts by Marcopper Mining Corporation/Placer Dome Inc. continues for the Boac River and the affected delta. MGB is conducting a post-spill impact assessment in coordination with the Environmental Management Bureau.

South Africa

[Original: English]
[28 February 1997]

1. The allegations concerning Thor Chemicals SA (Pty.) Ltd. (para. 64) relate to poor household practices within the factory. All charges of homicide against three employees were dropped by the State Prosecutor, and Thor Chemicals was found guilty by the court of contravening the Machinery and Occupational Safety Act of 1983 (Act 6 of 1983). The court proceedings took place from 1992 to 1995. The importation of spent mercury catalyst into South Africa by Thor Chemicals was known to and permitted by the South African Government and there was no illicit dumping or trafficking. The imports were terminated in 1992. The majority of imported material remains stockpiled on Thor Chemicals' premises and the future treatment of this material is currently the subject of a Commission of Inquiry that was appointed by President Mandela on 24 March 1995. The terms of reference of the Commission are to investigate the history and background of the acquisition of spent mercury catalyst stockpiled by Thor Chemicals as well as additional mercury containing sludge on the premises and to report on the further utilization or disposal thereof, and to recommend on the best practical environmental option to deal with the problem of mercury containing catalyst and/or waste currently present on Thor's premises. Furthermore, after the completion of a report on the above-mentioned issues, the Commission will investigate the regulation and enforcement relating to the monitoring and control of mercury processing and will recommend the best option to minimize risks and to protect workers' health and environment. The first phase of the Commission's work has been concluded and its report will be handed to President Mandela in the near future, after which the Commission will pass on to the other phases.

Turkey

[Original: English]
[11 June 1997]

1. The By-law on the Protection of the Quality of the Air, which entered into force following its publication in the Official Gazette of 2 November 1996, defines the limits for toxic emissions by industrial plants and air polluting parameters. The rules governing the control of air pollution by industrial plants are also enumerated in this by-law. Under this by-law, thermal power plants are required to get a special "emission permit" to function. Thermal power plants emit, among other pollutants, sulphur dioxide, waste ashes, nitrogen oxides and carbon monoxide, which are mainly responsible for air pollution. Consequently, as to the allegations that the three power plants in Yatağan, Yeniköy and Gökova (Kemerköy) are responsible for polluting the Muğla region with toxic emissions and acid rain (para. 59), it has to be mentioned that sulphur dioxide and nitrogen oxide are not toxic emissions and are classified as air pollutants. Various analyses show that the emission of these pollutants by the above-mentioned plants is within permissible limits.

2. In line with the provisions of the By-law on the Protection of the Quality of the Air, flue gas desulphurization facilities were established in

the Yatağan, Yeniköy and Gökova (Kemerköy) power plants in order to limit toxic emissions to the level required by law. A contract for the construction of a desulphurization plant, which will radically reduce the sulphur dioxide level in the flue gas in the Yatağan power plant, has been signed. The financing of the construction of the system will be provided by the Government of Germany. The preliminary work for the construction of flue gas desulphurization plants in Yeniköy and Gökova (Kemerköy) is presently under way. Until the desulphurization facilities start functioning in the relevant plants, the Ministry of Environment deems it appropriate that careful analyses of emissions by the relevant plants be conducted, the measurements considered by the Local Environment Board and necessary measures taken when the required levels are violated, in order to prevent possible damage during the operation of the power plants.

3. Necessary measures have been taken to minimize the emission of waste ashes by the three power plants.

4. The allegation that 700 tons/year of uranium are discharged from these power plants lacks any scientific credibility. Radioactivity analyses were conducted in the Yatağan power plant and the surrounding area by the Turkish Atomic Energy Agency in 1990, at the request of the Yatağan Civil Court. The analyses based on soil, plant and air samples showed that the amount of radioactive products is within natural limits (background level). The analysis based on samples from waste ashes showed that the amount of radioactive products is at a level that poses no danger to human health. The pile of waste ashes produced by the Yatağan power plant was covered with agricultural soil in 1993 and the land was then afforested. As a result of the above-mentioned analyses, it is established that waste ashes have only a trivial impact on the natural radioactivity level in the area and that the current levels of radioactivity are within acceptable levels.

5. There is no evidence to prove the accuracy of allegations that the incidence of certain diseases is on the rise among the inhabitants of the area as a result of high radioactivity levels.

United Kingdom of Great Britain and Northern Ireland

[Original: English]
[15 May 1997]

1. ReChem's toxic waste incinerator in Pontypool, South Wales (para. 60). The ReChem operation at Pontypool does not appear to fall within the mandate of the Special Rapporteur, since it is not located in an African or other developing country.

2. British Petroleum (BP) in Colombia (para. 61). The conduct of BP and the Colombian army and its paramilitary allies is outside the mandate of the Special Rapporteur. With regard to the allegations of environmental damage, given the lack of detail, it is not possible to investigate the truth or otherwise of the allegation.

3. Export of battery scrap to the Philippines and of lead acid batteries to Indonesia for recycling (paras. 41, 63). Given the lack of detail of the

allegations, the United Kingdom has been unable to find any documentary evidence which might confirm or deny the truth of the allegations.

4. Imperial Chemical Industries (ICI), Malaysia (para. 62). The allegations concerning the misuse of Gramoxone (paraquat) in Malaysia appear to be outside the mandate of the Special Rapporteur as they do not involve the illicit traffic and dumping of toxic and dangerous products and wastes. Gramoxone is approved for use as a herbicide by the Malaysian Government and Zeneca (which has replaced ICI Agrochemicals) undertakes extensive training for those involved in its distribution, storage and use. The specific plant referred to in the allegation was sold to the Chemical Company of Malaysia in 1994. The United Kingdom Government is unable to comment on working conditions in Malaysia which are clearly a matter for the Malaysian Government.

5. Thor Chemicals: importation of spent mercury catalyst for processing, South Africa (para. 64). The United Kingdom Government has been informed by Thor Chemicals (UK) Ltd. that, between 1987 and May 1992, 10,137 kg net (24,970 kg gross) of Thor mercury compound residues were exported to Thor Chemicals SA (Pty.) Ltd. for processing. Thor Chemicals (UK) Ltd. states that shipments ceased after May 1992. The United Kingdom Government has no evidence to suggest that Thor Chemicals (UK) Ltd. did not comply with relevant United Kingdom legislation on the shipment of dangerous goods. Compliance of the working practices of Thor Chemicals SA (Pty.) Ltd. with health and safety legislation is a matter for the relevant authorities in South Africa and, in that regard, the United Kingdom Government would refer to the letter of 28 February 1997 from the Permanent Representative of South Africa to the United Nations Office at Geneva to the Special Rapporteur which states that "the importation of spent mercury catalyst into South Africa by the Thor Chemicals was known and permitted by the South African Government and there was no illicit dumping or trafficking". It would appear that this allegation does not fall within the mandate of the Special Rapporteur.

United States of America

[Original: English]
[25 March 1997]

1. The United States has stringent laws in place regarding the management and disposal of hazardous wastes and the transboundary movement of these wastes and has long supported the underlying principles of the Basel Convention. The United States is concerned that most of the allegations contained in the Special Rapporteur's report do not fall within her mandate as laid out in Commission resolutions 1995/81 and 1996/14. The vast majority of cases mentioned in the allegations have nothing to do with illicit trafficking and dumping of hazardous wastes; these include alleged cases involving operations in Indonesia, Papua New Guinea, Myanmar, Peru and Nigeria. Besides exceeding the mandate, these cases involve issues that are matters of local jurisdiction, questions for local authorities or domestic business arrangements established under and subject to local regulations.

2. Another case that falls beyond the mandate of the Special Rapporteur is the allegation regarding the placement of hazardous wastes within the United States based on socio-economic and racial factors (paras. 65 ff.), which is an issue of great importance domestically, but it is clearly beyond the scope of the Special Rapporteur's mandate, in particular given that the United States is not a developing country.

3. The alleged export of pesticide (para. 69) is similarly beyond the mandate of the Special Rapporteur, because it deals with goods in commerce, not with hazardous wastes. The issue of the export of banned or restricted chemicals and pesticides is an important issue to the United States and is being addressed in the ongoing negotiations on a convention for the prior informed consent on the trade in certain toxic chemicals and pesticides, not within the Basel Convention, because this substance is not waste.

4. Exports of battery scrap to the Philippines (para. 41). American laws and regulations allow the proper export of certain battery scrap for recycling operations. The United States supports environmentally sound recycling programmes.

5. Exports to the Indian company Bharat Zinc (para. 54). No information was provided regarding the types of hazardous wastes that are alleged to have been exported to Bharat Zinc.

6. Exports of "waste paper" to Argentina (para. 71). The United States does not restrict the proper export of waste paper for recycling; in fact, the United States supports environmentally sound paper recycling programmes that reduce the demand for new raw materials from forests.

7. Illegal dumping of wastes in Mexico (para. 68). The United States has a long record of cooperation with Mexico on environmental issues. Any legal trade in hazardous wastes between the United States and Mexico is governed under a bilateral hazardous waste agreement. Any allegations of illegal waste dumping are dealt with through bilateral cooperation mechanisms between American and Mexican environmental officials.